

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

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SOURCE: 51 FR 7772, Mar. 6, 1986, unless otherwise noted.

§801.1 Purpose.

The purpose of this part is to set forth the rules and regulations necessary to carry out the data collection program concerning international trade in services that is required by, or provided for in, the International Investment and Trade in Services Survey Act (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101 to 3108, as amended by section 306 of Pub. L. 98-573), hereafter “the Act.” The overall purpose of the Act with respect to services trade is to provide comprehensive and reliable information pertaining to international trade in services, and to do so with the minimum burden on respondents and with no unnecessary duplication of effort. The data are needed for policy-making purposes, for conducting international negotiations on trade in services, and for improving the recording of services transactions in the U.S. balance of payments accounts.

§801.2 Recordkeeping requirements.

In accordance with section 5(b)(1) of the Act (22 U.S.C. 3104), persons subject to the jurisdiction of the United States shall maintain any information (including journals or other books of original entry, minute books, stock transfer records, lists of shareholders, or financial statements) which is essential for carrying out the surveys and studies provided for by the Act.

§801.3 General reporting requirements.

(a) In accordance with section 5(b)(2) of the Act (22 U.S.C. 3104) persons subject to the jurisdiction of the United States shall furnish, under oath, any report containing information which is determined to be necessary to carry out the surveys and studies provided for by the Act.

(b) Such reports may be required from any U.S. person, other than the U.S. Government, engaged in international trade in services. Specific reporting requirements for a given report form are set forth below and, in more detail, on the form itself.

§801.4 Response required.

Reports, as specified below, are required from all U.S. persons coming within the reporting requirements, whether or not they are contacted by BEA. In addition, any person BEA contacts by sending them report forms must respond in writing. The response must be made by the due date of the report, either by filing the properly completed report form or by certifying in writing on the form that the person has no international services transactions within the purview of the Act or the regulations contained herein. The latter requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act.

§801.5 Confidentiality.

Information collected pursuant to §801.3 is confidential (see section 5(c) of the Act, 22 U.S.C. 3104).

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(a) Access to this information shall be available only to officials and employees (including consultants and contractors and their employees) of agencies designated by the President to perform functions under the Act.

(b) Subject to paragraph (d) of this section, the President may authorize the exchange of information between agencies or officials designated to perform functions under the Act.

(c) Nothing in this part shall be construed to require any Federal agency to disclose information otherwise protected by law.

(d) This information shall be used solely for analytical or statistical purposes or for a proceeding under § 801.6.

(e) No official or employee (including consultants and contractors and their employees) shall publish or make available to any other person any information collected under the Act in such a manner that the person to whom the information relates can be specifically identified.

(f) Reports and copies of reports prepared pursuant to the Act are confidential and their submission or disclosure shall not be compelled by any person without the prior written permission of the person filing the report and the customer of such person where the information supplied it identifiable as being derived from the records of such customer.

§ 801.6 Penalties.

(a) Whoever fails to furnish any information required by the Act or by § 801.3, or to comply with any other rule, regulation, order or instruction promulgated under the Act, may be subject to a civil penalty not exceeding \$10,000 in a proceeding brought in an appropriate United States court and to injunctive relief commanding such person to comply, or both (see section 6 (a) and (b) of the Act, 22 U.S.C. 3105).

(b) Whoever willfully fails to submit any information required by the Act or by § 801.3, or willfully violates any other rule, regulation, order or instruction promulgated under the Act, upon conviction, shall be fined not more than \$10,000 and, if an individual, may be imprisoned for not more than one year, or both. Any officer, director, employee, or agent or any corporation

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who knowingly participates in such violation, upon conviction, may be punished by a like fine, imprisonment, or both (see section 6(c) of the Act, 22 U.S.C. 3105).

(c) Any person who willfully violates § 801.5 relating to confidentially, shall, upon conviction, be fined not more than \$10,000, in addition to any other penalty imposed by law (see section 5(d) of the Act, 22 U.S.C. 3104).

§ 801.7 General definitions.

(a) *Services* means economic activities whose outputs are other than tangible goods. Such term includes, but is not limited to, banking, insurance, transportation, communications and data processing, retail and wholesale trade, advertising, accounting, construction, design, engineering, management consulting, real estate, professional services, entertainment, education, and health care.

(b) *United States*, when used in a geographic sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

(c) *Foreign*, when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States.

(d) *Person* means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government sponsored agency).

(e) *United States person* means any person resident in the United States or subject to the jurisdiction of the United States.

(f) *Foreign person* means any person resident outside the United States or subject to the jurisdiction of a country other than the United States.

(g) *Business enterprise* means any organization, association, branch, or venture which exists for profitmaking purposes or to otherwise secure economic

advantage, and any ownership of any real estate.

(h) *Unaffiliated foreign person* means, with respect to a given U.S. person, any foreign person that is not an “affiliated foreign person” as defined in paragraph (i) of this section.

(i) *Affiliated foreign person* means, with respect to a given U.S. person—

(1) A foreign affiliate of which the U.S. person is a U.S. parent; or

(2) The foreign parent or other member of the affiliated foreign group of which the U.S. person is a U.S. affiliate.

(j) *Parent* means a person of one country who directly or indirectly, owns or controls 10 per centum or more of the voting stock of an incorporated business enterprise, or an equivalent ownership interest in an unincorporated business enterprise, which is located outside that country.

(k) *Affiliate* means a business enterprise located in one country which is directly or indirectly owned or controlled by a person of another country to the extent of 10 per centum or more of its voting stock for an incorporated business or an equivalent interest for an unincorporated business, including a branch.

(l) *U.S. parent* means the U.S. person that has direct investment in a foreign business enterprise.

(m) *Foreign affiliate* means an affiliate located outside the United States in which a U.S. person has direct investment.

(n) *Foreign parent* means the foreign person, or the first person outside the United States in a foreign chain of ownership, which has direct investment in a U.S. business enterprise, including a branch.

(o) *U.S. affiliate* means an affiliate located in the United States in which a foreign person has a direct investment.

(p) *Affiliated foreign group* means—

(1) The foreign parent;

(2) Any foreign person, proceeding up the foreign parent’s ownership chain, which owns more than 50 per centum of the person below it up to and including that person which is not owned more than 50 per centum by another foreign person; and

(3) Any foreign person, proceeding down the ownership chain(s) of each of

these members, which is owned more than 50 per centum by the person above it.

§801.8 Miscellaneous.

(a) *Required information not available.* All reasonable efforts should be made to obtain information required for reporting. Every applicable question on each form or schedule should be answered. When only partial information is available, an appropriate indication should be given.

(b) *Estimates.* If actual figures are not available, estimates should be supplied and labeled as such. When a data item cannot be fully subdivided as required, a total and an estimated breakdown of the total should be supplied.

(c) *Specify.* When “specify” is included in certain data items, the type and dollar amount of the major items included must be given for at least the items mentioned in the line or column instruction.

(d) *Space on form insufficient.* When space on a form is insufficient to permit a full answer to any item, the required information should be submitted on supplementary sheets, appropriately labeled and referenced to the item of column number and the form.

(e) *Extensions.* Requests for an extension of a reporting deadline will not normally be granted. However, in a hardship case, a written request for an extension will be considered provided it is received at least 15 days prior to the due date of the report and enumerates substantive reasons necessitating the extension.

(f) *Number of copies.* A single original copy of each form or schedule shall be filed with the Bureau of Economic Analysis. This should be the copy with the address label if such a labeled copy has been provided. In addition, each respondent must retain a copy of its report to facilitate resolution of problems. Both copies are protected by law; see §801.5.

(g) *Other.* Instructions concerning filing dates, where to send reports, and whom to contact concerning a given report are contained on each form.

§801.9 Reports required.

(a) *Benchmark surveys.* Section 4(a)(4) of the Act (22 U.S.C. 3103) provides that

benchmark surveys of trade in services between U.S. and unaffiliated foreign persons be conducted, but not more frequently than every 5 years. General reporting requirements, exemption levels, and the year of coverage of the BE-20 survey may be found in § 801.10, and general reporting requirements, exemption levels, and the year of coverage of the BE-80 survey may be found in § 801.11. More detailed instructions are given on the forms themselves.

(b) *Annual surveys.* (1) BE-29, Foreign Ocean Carriers' Expenses in the United States:

(i) *Who must report.* A BE-29 report is required from U.S. agents on behalf of foreign ocean carriers transporting freight or passengers to or from the United States. U.S. agents are steamship agents and other persons representing foreign carriers in arranging ocean transportation of freight and cargo between U.S. and foreign ports and in arranging port services in the United States. Foreign carriers are foreign persons that own or operate ocean going vessels calling at U.S. ports, including VLCC tankers discharging petroleum offshore to pipelines and lighter vessels destined for U.S. ports. They include carriers who own or who operate their own or chartered (United States or foreign-flag) vessels. They also include foreign subsidiaries of U.S. companies operating their own or chartered vessels as carriers for their own accounts. Where the vessels under foreign registry are operated directly by a U.S. carrier for its own account, the operations of such vessels should be reported on Form BE-30, Ocean Freight Revenues and Foreign Expenses of United States Carriers. The Bureau of Economic Analysis may, in lieu of BE-29 reports required from foreign carriers' U.S. agents, accept consolidated reports from foreign governments covering the operations of their national shipping concerns when, in the Bureau's discretion, such consolidated reports would provide the required information. Where such reports are accepted, the individual reports from foreign carriers' U.S. agents will not be required.

(ii) *Exemption.* Any U.S. person otherwise required to report is exempted from reporting if the total number of

port calls by foreign vessels handled in the reporting period is less than forty or total covered expenses are less than \$250,000. For example, if an agent handled less than 40 port calls in a calendar year, the agent is exempted from reporting. If the agent handled 40 or more calls, the agent must report unless covered expenses for all foreign carriers handled by the agent were less than \$250,000. The determination of whether a U.S. person is exempt may be based on the judgment of knowledgeable persons who can identify reportable transactions without conducting a detailed manual records search.

(2) BE-36, Foreign Airline Operators' Revenues and Expenses in the United States:

(i) *Who must report.* A BE-36 report is required from U.S. offices, agents, or other representatives of foreign airlines that are engaged in transporting passengers or freight and express to or from the United States. If the U.S. office, agent, or other representative does not have all the information required, it must obtain the additional information from the foreign airline operator.

(ii) *Exemption:* A U.S. person otherwise required to report is exempted from reporting if total covered revenues and total covered expenses incurred in the United States are each less than \$500,000 in the reporting period. If either total covered revenues or total covered expenses are \$500,000 or more in the reporting period, a report must be filed.

(3) BE-47, Annual Survey of Construction, Engineering, Architectural, and Mining Services Provided by U.S. Firms to Unaffiliated Foreign Persons:

(i) *Who must report.* Form BE-47 must be filed by each U.S. person (other than U.S. Government agencies) providing the following types of services on a contract, fee, or similar basis to unaffiliated persons on foreign projects: The services of general contractors in the fields of building construction and heavy construction; construction work by special trade contractors, such as the erection of structural steel for bridges and buildings and on-site electrical work; services of a professional nature in the fields of engineering, architecture, and land surveying; and

mining services in the development and operation of mineral properties, including oil and gas field services.

(ii) *Exemption.* Any U.S. person otherwise required to report is exempted from reporting if, for all countries and all projects combined, the gross value of new contracts received and gross operating revenues are both less than \$1,000,000. If *either* the gross value of new contracts received or gross operating revenues is \$1,000,000 or more, then a report is required.

(4) BE-48, Annual Survey of Reinsurance and other Insurance Transactions by U.S. Insurance Companies with Foreign Persons:

(i) *Who must report.* Reports on Form BE-48 are required from U.S. persons who have engaged in reinsurance transactions with foreign persons, or who have received premiums from, or paid losses to, foreign persons in the capacity of primary insurers.

(ii) *Exemption.* A U.S. person otherwise required to report is exempted from reporting if, with respect to transactions with foreign persons, each of the following six items was less than \$1,000,000 in the reporting period: Reinsurance premiums received, reinsurance premiums paid, reinsurance losses paid, reinsurance losses recovered, primary insurance premiums received, and primary insurance losses paid. If *any one* of these items is \$1,000,000 or more in the reporting period, a report must be filed.

(5) BE-93, Annual Survey of Royalties, License Fees, and Other Receipts and Payments for Intangible Rights Between U.S. and Unaffiliated Foreign Persons:

(i) *Who must report.* Reports on Form BE-93 are required from U.S. persons who have entered into agreements with unaffiliated foreign persons to buy, sell, or use intangible assets or proprietary rights, excluding oil royalties and other natural resources (mining) royalties.

(ii) *Exemption.* A U.S. person otherwise required to report is exempt if total receipts and total payments of the types covered by the form are each less than \$500,000 in the reporting year. If the total of *either* covered receipts or payments is \$500,000 or more in the reporting year, a report must be filed.

(6) BE-22, Annual Survey of Selected Services Transactions With Unaffiliated Foreign Persons:

(i) *Who must report—(A) Mandatory reporting.* A BE-22 report is *required* from each U.S. person who had transactions (either sales or purchases) in excess of \$1,000,000 with unaffiliated foreign persons in any of the covered services during the U.S. person's fiscal year. The determination of whether a U.S. person is subject to this mandatory reporting requirement may be judgmental, that is, based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty without conducting a detailed manual records search.

(B) *Voluntary reporting.* If, during the U.S. person's fiscal year, the U.S. person's total transactions (either sales or purchases) in any of the covered services is \$1,000,000 or less, the U.S. person is requested to provide an estimate of the total for each type of service. Provision of this information is voluntary. The estimates may be judgmental, that is, based on recall, without conducting a detailed manual records search.

(C) Any U.S. person receiving a BE-22 survey form from BEA must complete all relevant parts of the form and return the form to BEA. A person that is not subject to the mandatory reporting requirement in paragraph (b)(6)(i)(A) of this section and is not filing information on a voluntary basis must only complete the "Determination of reporting status" and the "Certification" sections of the survey. This requirement is necessary to ensure compliance with the reporting requirements and efficient administration of the survey by eliminating unnecessary followup contact.

(ii) *Covered services.* With the exceptions given in this paragraph, the services covered by this survey are the same as those covered by the BE-20, Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons-1996, as listed in §801.10(c) of this part. The exceptions are elimination of coverage of general use computer software royalties and license fees from computer and data processing services, and the elimination of coverage of four small types

of services—agricultural services; management of health care facilities; mailing, reproduction, and commercial art; and temporary help supply services.

(7) BE-82, Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons:

(i) A BE-82, Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, will be conducted covering companies' 1995 fiscal year and every year thereafter except when a BE-80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, is conducted (see § 801.11). All legal authorities, provisions, definitions, and requirements contained in § 801.1 through § 801.8 are applicable to this survey. Additional rules and regulations for the BE-82 survey are given in paragraphs (b)(7)(i)(A) through (D) of this section. More detailed instructions are given on the report form itself.

(A) *Who must report—(1) Mandatory reporting.* Reports are required from each U.S. person who is a financial services provider or intermediary, or whose consolidated U.S. enterprise includes a separately organized subsidiary or part that is a financial services provider or intermediary, and who had transactions (either sales or purchases) directly with unaffiliated foreign persons in all financial services combined in excess of \$5,000,000 during its fiscal year covered by the survey. The \$5,000,000 threshold should be applied to financial services transactions with unaffiliated foreign persons by all parts of the consolidated U.S. enterprise combined that are financial services providers or intermediaries. Because the \$5,000,000 threshold applies separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both sales and purchases.

(j) The determination of whether a U.S. financial services provider or intermediary is subject to this mandatory reporting requirement may be judgmental, that is, based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a

reasonable degree of certainty, without conducting a detailed manual records search.

(ii) Reporters who file pursuant to this mandatory reporting requirement must provide data on total sales and/or purchases of each of the covered types of financial services transactions and must disaggregate the totals by country.

(2) *Voluntary reporting.* If, during the fiscal year covered, sales or purchases of financial services by a firm that is a financial services provider or intermediary, or by a firm's subsidiaries or parts combined that are financial services providers or intermediaries, are \$5,000,000 or less, the U.S. person is *requested* to provide an estimate of the total for each type of service. Provision of this information is voluntary. Because the \$5,000,000 threshold applies separately to sales and purchases, this voluntary reporting option may apply only to sales, only to purchases, or to both sales and purchases.

(B) *BE-82 definition of financial services provider.* The definition of a financial services provider used for this survey is the same as that used for the BE-80 benchmark survey, as defined in § 801.11(b).

(C) *Covered types of services.* The BE-82 survey covers the same types of financial services transactions that are covered by the BE-80 benchmark survey, as listed in § 801.11(c).

(D) *What to file.* (1) The BE-82 survey consists of Forms BE-82(A) and BE-82(B). Before completing a Form BE-82(B), a consolidated U.S. enterprise (including the top parent and all of its subsidiaries and parts combined) must complete Form BE-82(A) to determine its reporting status. If the enterprise is subject to the mandatory reporting requirement, or if it is exempt from the mandatory reporting requirement but chooses to report data voluntarily, either a separate Form BE-82(B) may be filed for each separately organized financial services subsidiary or part of the consolidated U.S. enterprise, or a single BE-82(B) may be filed, representing the sum of covered transactions by all financial services subsidiaries or parts of the enterprise combined.

(2) Reporters that receive the BE-82 survey from BEA, but that are not reporting data in either the mandatory or voluntary section of any Form BE-82(B), must return the Exemption Claim, attached to Form BE-82(A), to BEA.

(ii) [Reserved]

(c) *Quarterly surveys.* (1) BE-30, Ocean Freight Revenues and Foreign Expenses of United States Carriers:

(i) *Who must report.* A BE-30 report is required from U.S. carriers, i.e., from U.S. persons that own or operate dry cargo, passenger (including combination), and tanker vessels regardless of whether the vessels are registered in the United States or in foreign countries. Operators are persons who enter into any form of transportation contract with shippers of merchandise (or their agents) for the transportation of freight and cargo between U.S. and foreign ports or between foreign ports, whether on the operators' own vessels or chartered vessels.

(ii) *Exemption.* A U.S. person otherwise required to report is exempted from reporting if total annual covered revenues (i.e., revenues on outbound, cross-trade, and inbound cargoes and charter hire received) and total annual covered expenses (i.e., charter hire paid and expenses in foreign countries) are, or are expected to be, each less than \$500,000. If either total annual covered revenues or total annual covered expenses are, or are expected to be, \$500,000 or more, a report must be filed.

(2) BE-37, U.S. Airline Operators' Foreign Revenues and Expenses:

(i) *Who must report.* A BE-37 report is required from all U.S. airline operators engaged in transportation of passengers and freight to and from the United States or between foreign points.

(ii) *Exemption.* A U.S. person otherwise required to report is exempted from reporting if total annual covered revenues (i.e., revenues from carrying U.S. export freight to foreign countries) and total annual covered expenses (i.e., expenses incurred outside the United States and aircraft leasing expenses) are, or are expected to be, each less than \$500,000. If either total annual covered revenues or total annual covered expenses are, or are ex-

pected to be, \$500,000 or more, a report must be filed.

[51 FR 7772, Mar. 6, 1986, as amended at 52 FR 19843, May 28, 1987; 52 FR 46589, Dec. 9, 1987; 53 FR 39455, Oct. 7, 1988; 53 FR 41563, Oct. 24, 1988; 57 FR 59289, Dec. 15, 1992; 59 FR 53935, Oct. 27, 1994; 60 FR 57337, Nov. 15, 1995; 62 FR 68163, Dec. 31, 1997]

EFFECTIVE DATE NOTE: At 62 FR 68163, 68164, Dec. 31, 1997, § 801.9 was amended by revising paragraphs (b)(5)(i) and (b)(6)(ii), effective Jan. 30, 1998. For the convenience of the user, the superseded text is set forth as follows:

§ 801.9 Reports required.

* * * * *

(b) * * *

(5) * * *

(i) *Who must report.* Reports on Form BE-93 are required from U.S. persons who have entered into agreements with unaffiliated foreign persons to buy, sell, or use intangible assets or proprietary rights, excluding those copyrights and other intellectual property rights that are related to computer software, and excluding oil royalties and other natural resources (mining) royalties.

* * * * *

(6) * * *

(i) * * *

(ii) *Covered services.* With the exceptions given below, the services covered by this survey are the same as those covered by the BE-20, Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons—1991, as listed in § 801.10(c) of this part. The exceptions are the elimination of coverage of four small types of services—agricultural services; management of health care facilities; mailing, reproduction, and commercial art; and temporary help supply services—and the addition of coverage of purchases of certain financial services. The financial services covered are those directly purchased from or sold to foreigners by U.S. companies (or by domestic subsidiaries of consolidated U.S. companies) that are not financial services intermediaries or providers. Finally, lease bonus payments are to be reported with purchases or sales of rights to natural resources, rather than with receipts or payments for the use of rights to natural resources.

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§ 801.10 Rules and regulations for the BE-20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons.

The BE-20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons, will be conducted covering companies' 1996 fiscal year and every fifth year thereafter. All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 through 801.9(a) are applicable to this survey. Additional rules and regulations for the BE-20 survey are given in this section. More detailed instructions and descriptions of the individual types of services covered are given on the report form itself.

(a) The BE-20 survey consists of two parts and eight schedules. Part I requests information needed to determine whether a report is required and which schedules apply. Part II requests information about the reporting entity. Each of the eight schedules covers one or more types of services and is to be completed only if the U.S. Reporter has transactions of the type(s) covered by the particular schedule.

(b) *Who must report*—(1) *Mandatory reporting*. A BE-20 report is required from each U.S. person who had transactions (either sales or purchases) in excess of \$500,000 with unaffiliated foreign persons in any of the services listed in paragraph (c) of this section during its fiscal year covered by the survey.

(i) The determination of whether a U.S. person is subject to this mandatory reporting requirement may be judgmental, that is, based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search. Because the \$500,000 threshold applies separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both sales and purchases.

(ii) Reporters who file pursuant to this mandatory reporting requirement must complete Parts I and II of Form BE-20 and all applicable schedules. The total amounts of transactions applicable to a particular schedule are to be entered in the appropriate column(s)

on line 1 of the schedule. In addition, except for sales of merchanting services, these amounts must be distributed below line 1 to the country(ies) involved in the transaction(s). For sales of merchanting services, the data by individual foreign country are not required to be reported, although these data may be reported voluntarily.

(iii) Application of the \$500,000 exemption level to each covered service is indicated on the schedule for that particular service. It should be noted that an item other than sales or purchases may be used as the measure of a given service for purposes of determining whether the threshold for mandatory reporting of the service is exceeded.

(2) *Voluntary reporting*. If, during the fiscal year covered, the U.S. person's total transactions (either sales or purchases) in any of the types of services listed in paragraph (c) of this section are \$500,000 or less, the U.S. person is requested to provide an estimate of the total for each type of service.

(i) Provision of this information is voluntary. The estimates may be judgmental, that is, based on recall, without conducting a detailed manual records search. Because the \$500,000 threshold applies separately to sales and purchases, the voluntary reporting option may apply only to sales, only to purchases, or to both sales and purchases.

(ii) The amounts of transactions reportable on a particular schedule are to be entered in the appropriate column(s) in the voluntary reporting section of the schedule; they are not required to be disaggregated by country. Reporters filing voluntary information only should also complete Parts I and II of the form.

(3) Any U.S. person that receives the BE-20 survey form from BEA, but is not reporting data in either the mandatory or voluntary section of the form, must nevertheless complete and return the Exemption Claim included with the form to BEA. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary followup contact.

(c) *Covered types of services*. Only the services listed in this paragraph are

covered by the BE-20 survey. Other services, such as transportation and reinsurance, are not covered. Covered services are: Agricultural services; research, development, and testing services; management, consulting, and public relations services; management of health care facilities; accounting, auditing, and bookkeeping services; legal services; educational and training services; mailing, reproduction, and commercial art; employment agencies and temporary help supply services; industrial engineering services; industrial-type maintenance, installation, alteration, and training services; performing arts, sports, and other live performances, presentations, and events; sale or purchase of rights to natural resources, and lease bonus payments; use or lease of rights to natural resources, excluding lease bonus payments; disbursements to fund news-gathering costs of broadcasters; disbursements to fund news-gathering costs of print media; disbursements to fund production costs of motion pictures; disbursements to fund production costs of broadcast program material other than news; disbursements to maintain government tourism and business promotion offices; disbursements for sales promotion and representation; disbursements to participate in foreign trade shows (purchases only); premiums paid on purchases of primary insurance; losses recovered on purchases of primary insurance; construction, engineering, architectural, and mining services (purchases only); merchanting services (sales only); financial services (purchases only, by companies or parts of companies that are not financial services providers); advertising services; computer and data processing services; data base and other information services; telecommunications services; operational leasing services; and "other" private services. "Other" private services covers transactions in the following types of services: Satellite photography services, security services, actuarial services, salvage services, oil spill and toxic waste cleanup services, language translation services, and account collection services.

[62 FR 1667, Jan. 13, 1997]

§ 801.11 Rules and regulations for the BE-80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons.

A BE-80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, will be conducted covering companies' 1994 fiscal year and every fifth year thereafter. All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 through 801.9 are applicable to this survey. Additional rules and regulations for the BE-80 survey are given in paragraphs (a) through (d) of this section. More detailed instructions are given on the report form itself.

(a) *Who must report*—(1) *Mandatory reporting.* Reports are required from each U.S. person who is a financial services provider or intermediary, or whose consolidated U.S. enterprise includes a separately organized subsidiary or part that is a financial services provider or intermediary, and who had transactions (either sales or purchases) directly with unaffiliated foreign persons in all financial services combined in excess of \$1,000,000 during its fiscal year covered by the survey. The \$1,000,000 threshold should be applied to financial services transactions with unaffiliated foreign persons by all parts of the consolidated U.S. enterprise combined that are financial services providers or intermediaries. Because the \$1,000,000 threshold applies separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both sales and purchases.

(i) The determination of whether a U.S. financial services provider or intermediary is subject to this mandatory reporting requirement may be judgmental, that is, based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(ii) Reporters who file pursuant to this mandatory reporting requirement must provide data on total sales and/or purchases of each of the covered types

of financial services transactions and must disaggregate the totals by country.

(2) *Voluntary reporting.* If, during the fiscal year covered, sales or purchases of financial services by a firm that is a financial services provider or intermediary, or by a firm's subsidiaries or parts combined that are financial services providers or intermediaries, are \$1,000,000 or less, the U.S. person is requested to provide an estimate of the total for each type of service. Provision of this information is voluntary. Because the \$1,000,000 threshold applies separately to sales and purchases, this voluntary reporting option may apply only to sales, only to purchases, or to both sales and purchases.

(b) *BE-80 definition of financial services provider.* The definition of financial services provider used for this survey is analogous in coverage to the finance and insurance part of Division H of the 1987 Standard Industrial Classification Manual (SIC major groups 60 through 64, and major group 67). More specifically, companies and/or subsidiaries and other separable parts of companies in the following industries are defined as financial services providers: Depository institutions (including commercial banks and thrifts); nondepository credit institutions; security and commodity futures brokers, dealers, exchanges, traders, underwriters, and services providers (including investment bankers and providers of securities custody services); credit card companies, insurance carriers, agents, brokers and services providers; investment advisors and managers; mutual funds; pension funds; trusts; holding companies; investors; oil royalty traders; etc.

(c) *Covered types of services.* The BE-80 survey covers the following types of financial services transactions (purchases and/or sales) between U.S. financial services providers and unaffiliated foreign persons: Brokerage, except foreign exchange brokerage services; private placement services; underwriting services; financial management services; credit-related services, except credit card services; credit card services; financial advisory and custody services; securities lending services; foreign exchange brokerage services; and other financial services.

(d) *What to file.* (1) The BE-80 survey consists of Forms BE-80(A) and BE-80(B). Before completing a Form BE-80(B), a consolidated U.S. enterprise (including the top parent and all of its subsidiaries and parts combined) must complete Form BE-80(A) to determine its reporting status. If the enterprise is subject to the mandatory reporting requirement, or if it is exempt from the mandatory reporting requirement but chooses to report data voluntarily, either a separate Form BE-80(B) may be filed for each separately organized financial services subsidiary or part of the consolidated U.S. enterprise, or a single BE-80(B) may be filed, representing the sum of covered transactions by all financial services subsidiaries or parts of the enterprise combined.

(2) Reporters that receive the BE-80 survey from BEA, but that are not reporting data in either the mandatory or voluntary section of any Form BE-80(B), must return the Exemption Claim, attached to Form BE-80(A), to BEA.

[59 FR 53935, Oct. 27, 1994]

PART 806—DIRECT INVESTMENT SURVEYS

Sec.

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- 806.18 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

AUTHORITY: 5 U.S.C. 301; 22 U.S.C. 3101-3108; and E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

SOURCE: 42 FR 64315, Dec. 22, 1977, unless otherwise noted.

§ 806.1 Purpose.

The purpose of this part is to set forth the rules and regulations necessary to carry out the data collection program and analyses concerning direct investment as required by, or provided for in, the International Investment Survey Act of 1976 (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101 to 3108), hereinafter "the Act". The overall purpose of the Act is to provide comprehensive and reliable information pertaining to international investment, including direct investment, and to do so with a minimum of burden on respondents and with no unnecessary duplication of effort.

§ 806.2 Recordkeeping requirements.

In accordance with section 5(b)(1) of the Act (22 U.S.C. 3104) persons subject to the jurisdiction of the United States shall maintain any information (including journals or other books of original entry, minute books, stock transfer records, lists of shareholders, or financial statements) which is essential for carrying out the surveys and studies provided for by the Act.

§ 806.3 Reporting requirements.

(a) In accordance with section 5 (b)(2) of the Act (22 U.S.C. 3104) persons subject to the jurisdiction of the United States shall furnish, under oath, any report containing information which is determined to be necessary to carry out the surveys and studies provided for by the Act.

(b) Such reports may be required from among others, U.S. persons which have direct investment abroad, U.S. persons in which foreign persons have direct investment, U.S. intermediaries, and U.S. persons which assist or intervene in the purchase or sale of direct investment interests, such as real estate brokers and brokerage houses acting as managers of tender offers.

§ 806.4 Response required.

Reports, as specified below, are required from all persons coming within the reporting requirements, whether or not they are contacted by BEA. In addition, any person BEA contacts, either by sending them report forms or buy written inquiry concerning the person's being subject to the reporting requirements of a survey conducted pursuant to this part must respond in writing. The response must be made by filing the properly completed report form, or by submitting in writing, or within 30 days of being contacted, a valid exemption claim (including the situation where the statistical data requested on the form are not applicable) or by certifying in writing to the fact that the person has no direct investments within the purview of the Act or the regulations contained herein. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act.

§ 806.5 Confidentiality.

Information collected pursuant to § 806.3 is confidential (see section 5(c) of the Act, 22 U.S.C. 3104).

(a) Access to this information shall be available only to officials and employees (including consultants and contractors and their employees) of agencies designated by the President to perform functions under the Act.

(b) Subject to paragraph (d) of this section, the President may authorize the exchange of information between agencies or officials designated to perform functions under the Act.

(c) Nothing in this part shall be construed to require any Federal Agency to disclose information otherwise protected by law.

(d) This information shall be used solely for analytical or statistical purposes or for a proceeding under § 806.6.

(e) No official or employee (including consultants and contractors and their employees) shall publish or make available to any other person any information collected under the Act in such a manner that the person to whom the information relates can be specifically identified.

§ 806.6

(f) Reports and copies of reports prepared pursuant to the Act are confidential and their submission or disclosure shall not be compelled by any person without the prior written permission of the person filing the report and the customer of such person where the information supplied is identifiable as being derived from the records of such customer.

§ 806.6 Penalties.

(a) Whoever fails to furnish any information required by the Act or required by § 806.3 or to comply with any other rule, regulation, order or instruction promulgated under the Act may be subject to a civil penalty not exceeding \$10,000 in a proceeding brought in an appropriate United States court and to injunctive relief commanding such person to comply, or both (see section 6(a) and (b) of the Act, 22 U.S.C. 3105).

(b) Whoever willfully fails to submit any information required by the Act or required by § 806.3 or willfully violates any other rule, regulation, order or instruction promulgated under the Act, upon conviction, shall be fined not more than \$10,000 and, if an individual, may be imprisoned for not more than one year, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such violation, upon conviction, may be punished by a like fine, imprisonment, or both (see section 6(c) of the Act, 22 U.S.C. 3105).

(c) Any person who willfully violates § 806.5 relating to confidentiality, shall, upon conviction, be fined not more than \$10,000, in addition to any other penalty imposed by law (see section 5(d) of the Act, 22 U.S.C. 3104).

§ 806.7 General definitions.

(a) *United States*, when used in a geographic sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

(b) *Foreign*, when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States;

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(c) *Person* means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government sponsored agency);

(d) *United States person* means any person resident in the United States or subject to the jurisdiction of the United States;

(e) *Foreign person* means any person resident outside the United States or subject to the jurisdiction of a country other than the United States;

(f) *Business enterprise* means any organization, association, branch, or venture which exists for profitmaking purposes or to otherwise secure economic advantage, and any ownership of any real estate;

(g) *Parent* means a person of one country who, directly or indirectly, owns or controls 10 per centum or more of the voting stock of an incorporated business enterprise, or an equivalent ownership interest in an unincorporated business enterprise, which is located outside that country;

(h) *Affiliate* means a business enterprise located in one country which is directly or indirectly owned or controlled by a person of another country to the extent of 10 per centum or more of its voting stock for an incorporated business or an equivalent interest for an unincorporated business, including a branch;

(i) *International investment* means (1) the ownership or control, directly or indirectly, by foreign persons of any interest in property in the United States, or of stock, other securities, or short- and long-term debt obligations of a United States person, and (2) the ownership or control, directly or indirectly, by contractual commitment or otherwise, by United States persons of any interest in property outside the United States, or of stock, other securities, or short- and long-term debt obligations of a foreign person;

(j) *Direct investment* means the ownership or control, directly or indirectly, by one person or 10 per centum or more of the voting securities of an incorporated business enterprise or an equivalent interest in an unincorporated business enterprise;

(k) *Portfolio investment* means any international investment which is not direct investment;

(l) *Associated group* means two or more persons who, by the appearance of their actions, by agreement, or by an understanding, exercise their voting privileges in a concerted manner to influence the management of a business enterprise. Each of the following are deemed to be an associated group:

- (1) Members of the same family,
- (2) A business enterprise and one or more of its officers and directors,
- (3) Members of a syndicate or joint venture, or
- (4) A corporation and its domestic subsidiaries;

(m) *Branch* means the operations or activities conducted by a person in a different location in its own name rather than through an incorporated entity; and

(n) *Intermediary* means an agent, nominee, manager, custodian, trust, or any person acting in a similar capacity.

[42 FR 64315, Dec. 22, 1977, as amended at 43 FR 54624, Nov. 22, 1978; 46 FR 23226, Apr. 24, 1981]

§ 806.8 Real estate.

Residential real estate held exclusively for personal use and not for profitmaking purposes is not subject to the reporting requirements of this part. A residence which was an owner's primary residence that is then leased by the owner while outside his/her country of usual residence but which the owner intends to reoccupy, is considered real estate held for personal use. Ownership of residential real estate by a corporation whose sole purpose is to hold the real estate and where the real estate is for the personal use of the individual owner(s) of the corporation, is considered real estate held for personal use. If a business enterprise, otherwise required to report, is in the form of real property not identifiable by name, reports are required to be filed by and

in the name of the beneficial owner, or in the name of such beneficial owner by the intermediary of such beneficial owner.

[46 FR 23226, Apr. 24, 1981]

§ 806.9 Airlines and ship operators.

Foreign stations, ticket offices, and terminal and port facilities of U.S. airlines and ship operators; and U.S. stations, ticket offices, and terminal and port facilities of foreign airlines and ship operators; which provide services only to their own operations are exempted from being reported. Reports are required when such affiliates produce significant revenues from services provided to unaffiliated persons.

§ 806.10 Determining place of residence and country of jurisdiction of individuals.

An individual will be considered a resident of, and subject to the jurisdiction of, the country in which physically located, subject to the following qualifications:

(a) Individuals who reside, or expect to reside, outside their country of citizenship for less than one year are considered to be residents of their country of citizenship.

(b) Individuals who reside, or expect to reside, outside their country of citizenship for one year or more are considered to be residents of the country in which they are residing, except as provided in paragraph (c) of this section.

(c) Notwithstanding paragraph (b) of this section, if an owner or employee of a business enterprise resides outside the country of location of the enterprise for one year or more for the purpose of furthering the business of the enterprise, and the country of the business enterprise is the country of citizenship of the owner then such owner or employee shall nevertheless be considered a resident of the country of citizenship provided there is the intent to return within a reasonable period of time.

(d) Individuals and members of their immediate families who are residing outside their country of citizenship as a result of employment by the government of that country—diplomats, consular officials, members of the armed

forces, etc.—are considered to be residents of their country of citizenship.

§ 806.11 Estates, trusts, and intermediaries.

(a) An estate, either U.S. or foreign, is a person and therefore may have direct investment, and the estate, not the beneficiary, is considered to be the owner.

(b) A trust, either U.S. or foreign, is a person, but is not a business enterprise. The trust shall be considered the same as an intermediary and reporting should be as outlined in paragraph (c) of this section. For reporting purposes, the beneficiary(ies) of the trust, or the creator(s) of the trust in the situation detailed below or if there is, or may be, a reversionary interest, shall be considered to be the owner(s) of the investments of the trust for determining the existence of direct investment. Where a corporation or other organization creates a trust designating its shareholders or members as beneficiaries, the creating corporation or organization shall be deemed to be the owner of the investments of the trust, or succeeding trusts where the presently existing trust has evolved out of a prior trust, for the purposes of determining the existence and reporting of direct investment.

This procedure is adopted in order to fulfill the statistical purposes of this part and does not imply that control over an enterprise owned or controlled by a trust is, or can be, exercised by the beneficiary(ies) or creator(s).

(c) *Intermediary.* (1) If a particular U.S. direct investment abroad is held, administered, or managed by a U.S. intermediary, such intermediary shall be responsible for reporting the required information for, and in the name of, its principal or shall instruct the principal to submit the required information. Upon instructing the principal, the intermediary shall be released from further liability to report provided it has informed this bureau of the date such instructions were given and the name and address of the principal, and has supplied the principal with any information in the possession of, or which can be secured by, the intermediary, that is necessary to permit the principal to complete the re-

quired reports. When acting in the capacity of an intermediary, the accounts or transactions of the U.S. intermediary with the foreign affiliate shall be considered as accounts or transactions of the U.S. principal with the foreign affiliate. To the extent such transactions or accounts are unavailable to the principal, they may be required to be reported by the intermediary.

(2) If a U.S. person holds a foreign affiliate through a foreign intermediary, the U.S. person will be considered to own the foreign affiliate directly and all accounts or transactions of the U.S. person with the intermediary will be considered to be with the foreign affiliate.

(3) If a particular foreign direct investment in the United States is held, exercised, administered, or managed by a U.S. intermediary for the foreign beneficial owner, such intermediary shall be responsible for reporting the required information for, and in the name of, the U.S. affiliate, and shall report on behalf of the U.S. affiliate or shall instruct the U.S. affiliate to submit the required information. Upon so instructing the U.S. affiliate, the intermediary shall be released from further liability to report provided it has informed this Bureau of the date such instructions were given and the name and address of the U.S. affiliate, and has supplied the U.S. affiliate with any information in the possession of, or which can be secured by, the intermediary that is necessary to permit the U.S. affiliate to complete the required reports. When acting in the capacity of an intermediary, the accounts or transactions of the U.S. intermediary with a foreign beneficial owner shall be considered as accounts or transactions of the U.S. affiliate with the foreign beneficial owner. To the extent such transactions or accounts are unavailable to the U.S. affiliate, they may be required to be reported by the intermediary.

(4) If a foreign beneficial owner holds a U.S. affiliate through a foreign intermediary, the U.S. affiliate may report the intermediary as its foreign parent but, when requested, must also identify and furnish information concerning the foreign beneficial owner, if

known, or if such information can be secured. Accounts or transactions of the U.S. affiliate with the foreign intermediary shall be considered as accounts or transactions of the U.S. affiliate with the foreign beneficial owner.

[42 FR 64315, Dec. 22, 1977, as amended at 43 FR 54624, Nov. 22, 1978]

§ 806.12 Partnerships.

Limited partners do not have voting rights in a partnership and therefore cannot have a direct investment in a partnership; their investment is considered to be portfolio investment. Determination of the existence of direct investment in a partnership shall be based on the country of residence of, and the percentage control exercised by, the general partner(s), although the latter may differ from the financial interest of the general partners.

§ 806.13 Miscellaneous.

(a) *Accounting methods and records.* Generally accepted U.S. accounting principles should be followed. Corporations should generally use the same methods and records that are used to generate reports to stockholders, unless otherwise specified in the reporting instructions for a given report form. Reports for unincorporated persons must be generated on an equivalent basis.

(b) *Annual stockholder's report.* Business enterprises issuing annual reports to stockholders are requested to furnish a copy of their annual reports to this Bureau.

(c) *Required information not available.* All reasonable efforts should be made to obtain information required for reporting. Every question on each form should be answered, except where specifically exempted. When only partial information is available, an appropriate indication should be given.

(d) *Estimates.* If actual figures are not available, estimates should be supplied and labeled as such. When a data item cannot be fully subdivided as required, a total and an estimated breakdown of the total should be supplied.

(e) *Specify.* When "specify" is included in certain data items, the type and dollar amount of the major items included must be given for at least the

items mentioned in the line instruction.

(f) *Space on form insufficient.* When space on a form is insufficient to permit a full answer to any item, the required information should be submitted on supplementary sheets, appropriately labeled and referenced to the item number and the form.

(g) *Extensions.* Requests for an extension of a reporting deadline will not normally be granted. However, in hardship cases, written requests for an extension will be considered provided they are received 15 days prior to the date of the report and enumerate substantive reasons necessitating the extension.

(h) *Number of copies.* A single original copy of each report shall be filed with the Bureau of Economic Analysis; this should be the copy with the address label if such a labeled copy has been provided. In addition, each respondent must retain a copy of its report. Both copies are protected by law; see § 806.5.

(i) *Other.* Instructions concerning filing dates, where to send reports, and whom to contact concerning a given report are contained on each form. General inquiries should be directed to the:

U.S. Department of Commerce, Bureau of Economic Analysis, International Investment Division (BE-50), Washington, DC 20230.

§ 806.14 U.S. direct investment abroad.

(a) *Specific definitions*—(1) *U.S. direct investment abroad* means the ownership or control, directly or indirectly, by one U.S. person of 10 per centum or more of the voting securities of an incorporated foreign business enterprise or an equivalent interest in an unincorporated foreign business enterprise, including a branch.

(2) *U.S. Reporter* means the U.S. person which has direct investment in a foreign business enterprise, including a branch. If the U.S. person is an incorporated business enterprise, the U.S. Reporter is the fully consolidated U.S. domestic enterprise consisting of (i) the U.S. corporation whose voting securities are not owned more than 50 percent by another U.S. corporation, and (ii) proceeding down each ownership chain from that U.S. corporation,

any U.S. corporation (including Domestic International Sales Corporations) whose voting securities are more than 50 percent owned by the U.S. corporation above it.

(3) *Foreign affiliate* means an affiliate located outside the United States in which a U.S. person has direct investment.

(4) *Majority-owned foreign affiliate* means a foreign affiliate in which the combined “direct investment interest” of all U.S. Reporters of the affiliate exceeds 50 per centum.

(b) *Foreign affiliate consolidation.* In cases where the recordkeeping system of foreign affiliates makes it impossible or extremely difficult to file a separate report for each foreign affiliate, a U.S. Reporter may consolidate affiliates in the same country when the following conditions apply:

(1) The affiliates are in the same BEA 3-digit industry as defined in the industry Classifications and Export and Import Trade Classifications Booklet; or

(2) The affiliates are integral parts of the same business operation. For example, if German affiliate A manufactures tires and a majority of its sales are to German affiliate B which produces autos, then affiliates A and B may be consolidated.

Any affiliates consolidated shall thereafter be considered to be one affiliate and should be consolidated in the same manner for all reports required to be filed pursuant to this section.

(c) *Reports required.* The place and time for filing, and specific instructions and definitions relating to, a given report form are given on the form. Reports are required even though a foreign affiliate may have been established, acquired, seized, liquidated, sold, expropriated, or inactivated during the reporting period.

(d) *Exemption levels.* Exemption levels for individual report forms will normally be stated in terms of total assets, net sales or gross operating revenues excluding sales taxes, and net income after income taxes, whether positive or negative, although different or special criteria may be specified for a given report form. If any one of the three items exceeds the exemption level and if the statistical data requested in the report are applicable to

the entity being reported, then a report must be filed. Since these items may not have to be reported on a given form, a U.S. Reporter claiming exemption from filing a given form must furnish a certification as to the levels of the items on which the exemption is based or must certify that the data requested are not applicable. The exemption-level tests shall be applied as outlined below.

(1) For quarterly report forms, as to the assets test reports are required beginning with the quarter in which total assets exceed the exemption level; as to the test for sales (revenues) and net income after income taxes, reports are required for each quarter of a year in which the annual amount of these items exceeds or can be expected to exceed, the exemption level. Quarterly reports for a year may be required retroactively when it is determined that the exemption level has been exceeded.

(2) For report forms requesting annual data after the close of the year in question, the test shall be whether any one of the three items exceeded the exemption level during that year.

(3) For the semi-annual plant and equipment expenditures survey, which requests actual data for the past year and/or annual projections for the current and following year, the test will be made for each year as to whether any one of the three items exceeded, or is expected to exceed, the exemption level; data must be reported only for the year or years in which the exemption level is, or is expected to be, exceeded.

If total assets, sales or net income exceed the exemption level in a given year, it is deemed that the exemption level will also be exceeded in the following year.

The number and title of each report form, its exemption level, and other reporting criteria, if any, pertaining to it, are given below.

(e) *Quarterly report form.* BE-577—Transactions of U.S. Reporter with Foreign Affiliate: One report is required for each foreign affiliate exceeding an exemption level of \$20,000,000 except that a report need not be filed by

a U.S. Reporter to report direct transactions with one of its foreign affiliates in which it does not hold a direct equity interest unless an intercompany balance or fee and royalty receipts or payments for the quarter exceed \$1,000,000.

(f) *Annual report forms.* (1) BE-133B—Follow-up Schedule of Expenditures for property, Plant, and Equipment of U.S. Direct Investment Abroad: This is a schedule-type report form on which each majority-owned foreign affiliate exceeding an exemption level of \$10,000,000 must be listed and the requested data given for each.

(2) BE-133C—Schedule of Expenditures for Property, Plant, and Equipment of U.S. Direct Investment Abroad: This is a schedule-type report form on which each majority-owned foreign affiliate exceeding an exemption level of \$10,000,000 must be listed and the requested data given for each.

(3) BE-11—Annual Survey of U.S. Direct Investment Abroad: A report, consisting of Form BE-11A and Forms(s) BE-11B(LF), BE-11B(SF), and/or BE-11C, is required of each nonbank U.S. Reporter who, at the end of the Reporter's fiscal year, had a nonbank foreign affiliate reportable on Form BE-11B(LF), BE-11B(SF), or BE-11C. Forms required and the criteria for reporting on each are as follows:

(i) Form BE-11A (Report for U.S. Reporter) must be filed by each nonbank U.S. person having a foreign affiliate reportable on Form BE-11B(LF), BE-11B(SF), or BE-11C.

(ii) Form BE-11B (LF) or (SF) (Report for Majority-owned Foreign Affiliate).

(A) A BE-11B(LF) (Long Form) is required to be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than \$50 million (positive or negative) at the end of, or for, the affiliate's fiscal year.

(B) A BE-11B(SF)(Short Form) is required to be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter for which any one of the three items listed in para-

graph (f)(3)(ii)(A) of this section was greater than \$20 million (positive or negative), but for which no one of these items was greater than \$50 million (positive or negative), at the end of, or for, the affiliate's fiscal year.

(iii) Form BE-11C (Report for Minority-owned Foreign Affiliate) must be filed for each minority-owned nonbank foreign affiliate that is owned at least 20 percent, but not more than 50 percent, directly and/or indirectly, by all U.S. Reporters of the affiliate combined, and for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than \$20 million (positive or negative) at the end of, or for, the affiliate's fiscal year. In addition, for the report covering fiscal year 1997 only, a Form BE-11C must be filed for each minority-owned nonbank foreign affiliate that is owned, directly or indirectly, at least 10 percent by one U.S. Reporter, but less than 20 percent by all U.S. Reporters of the affiliate combined, and for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than \$100 million (positive or negative) at the end of, or for, the affiliate's fiscal year.

(iv) Based on the preceding, an affiliate is exempt from being reported if it meets any one of the following criteria:

(A) None of its exemption level items is above \$20 million.

(B) For fiscal year 1997 only, it is less than 20 percent owned, directly or indirectly, by all U.S. Reporters of the affiliate combined and one of its exemption level items exceeds \$100 million.

(C) For fiscal years other than 1997, it is less than 20 percent owned, directly or indirectly, by all U.S. Reporters of the affiliate combined.

(D) Its U.S. parent (U.S. Reporter) is a bank.

(E) It is itself a bank.

(v) Notwithstanding paragraph (f)(3)(iv) of this section, a Form BE-11B(LF), BE-11B(SF), or BE-11C must be filed for a foreign affiliate of the U.S. Reporter than owns another non-exempt foreign affiliate of that U.S. Reporter, even if the foreign affiliate parent is otherwise exempt. That is, all affiliates upward in the chain of ownership must be reported.

(g) *Other report forms.* (1) BE-507—Industry Classification Questionnaire: In general, U.S. Reporters and their foreign affiliates will each be assigned a BEA 3-digit industry code in the BE-10 Benchmark Surveys required by the Act to be conducted in 1982, 1989, and every fifth year thereafter. However, interim reports on Form BE-507 are required:

- (i) For each foreign affiliate newly established or acquired by a U.S. person on or after January 1, 1978; or
- (ii) For each U.S. person who becomes a U.S. Reporter on or after January 1, 1978 by virtue of establishing or acquiring a foreign affiliate; or
- (iii) For an existing foreign affiliate or U.S. Reporter whose industry classification changes on or after January 1, 1978 so that a previous BE-507 report or the BE-10 report required to be filed for 1977 does not accurately reflect the current industry classification of the entity.

For new U.S. Reporters or foreign affiliates, the BE-507 report must be filed only if one of the other reports must be filed and shall be submitted with the initial filing of the related report. For a change in an existing U.S. Reporter or foreign affiliate which is currently filing one of the other reports, the BE-507 report must be filed whenever it is determined that change from one 3-digit industry classification to another has occurred.

(2) BE-10-Benchmark Survey of U.S. Direct Investment Abroad: Section 4(b) of the Act (22 U.S.C. 3103) provides that a comprehensive benchmark survey of U.S. direct investment abroad will be conducted in 1982, 1989, and every fifth year thereafter. The survey, referred to as the “BE-10,” consists of a Form BE-10A or BE-10A BANK for reporting information concerning the U.S. Reporter and Form(s) BE-10B(LF), BE-10B(SF), or BE-10B BANK for reporting information concerning each foreign affiliate. Exemption levels, specific requirements for, and the year of cov-

erage of, a given BE-10 survey may be found in § 806.16.

[42 FR 64315, Dec. 22, 1977; 43 FR 2169, Jan. 16, 1978, as amended at 46 FR 23226, Apr. 24, 1981; 47 FR 13139, Mar. 29, 1982; 48 FR 8993, Mar. 3, 1983; 49 FR 30059, July 26, 1984; 51 FR 11012, Apr. 1, 1986; 52 FR 8446, Mar. 18, 1987; 52 FR 42276, Nov. 4, 1987; 54 FR 51879, Dec. 19, 1989; 55 FR 49879, Dec. 3, 1990; 60 FR 10490, Feb. 27, 1995; 60 FR 54591, Oct. 25, 1995]

§ 806.15 Foreign direct investment in the United States.

(a) *Specific definitions—(1) Foreign direct investment in the United States* means the ownership or control, directly or indirectly, by one foreign person of 10 per centum or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.

(2) *U.S. affiliate* means an affiliate located in the United States in which a foreign person has a direct investment.

(3) *Foreign parent* means the foreign person, or the first person outside the United States in a foreign chain of ownership, which has direct investment in a U.S. business enterprise, including a branch.

(4) *Affiliated foreign group* means (i) the foreign parent, (ii) any foreign person, proceeding up the foreign parent’s ownership chain, which owns more than 50 per centum of the person below it up to and including that person which is not owned more than 50 per centum by another foreign person, and (iii) any foreign person, proceeding down the ownership chain(s) of each of these members, which is owned more than 50 per centum by the person above it.

(5) *Foreign affiliate of foreign parent* means, with reference to a given U.S. affiliate, any member of the affiliated foreign group owning the affiliate that is not a foreign parent of the affiliate.

(6) *Ultimate beneficial owner (UBO)* is that person, proceeding up the ownership chain beginning with and including the foreign parent, that is not more than 50 percent owned or controlled by another person. (An owner who creates

a trust, proxy, power of attorney, arrangement, or device with the purpose or effect of divesting such owner of the ownership of an equity interest as part of a plan or scheme to avoid reporting information, is deemed to be the owner of the equity interest.)

(b) *Beneficial, not record, ownership is the basis of the reporting criteria.* In those cases where a U.S. affiliate is also required to identify the ultimate beneficial owner (UBO) of the foreign investment, if the UBO is an individual, only the country of location of the individual must be given.

(c) *Bearer shares.* If the ownership in a U.S. affiliate by any owner in the ownership chain from the U.S. affiliate up to and including the ultimate beneficial owner (UBO) is represented by bearer shares, the requirement to disclose the information regarding the UBO remains with the reporting U.S. affiliate, except where a company in the ownership chain has publicly traded bearer shares. In that case, identification of the UBO may stop with the identification of the company whose capital stock is represented by the publicly traded bearer shares. For closely held companies with nonpublicly traded bearer shares, identifying the foreign parent or the UBO as "bearer shares" is not an acceptable response. The U.S. affiliate must pursue the identification of the UBO through managing directors or any other official or intermediary.

(d) *Aggregation of real estate investments.* A foreign person holding real estate investments that are foreign direct investments in the United States must aggregate all such holdings for the purpose of applying the exemption level tests. If the aggregate of such holdings exceeds one or more of the exemption levels, then the holdings must be reported even if they individually would be exempt.

(e) *Consolidated reporting by U.S. affiliates.* A U.S. affiliate shall file on a fully consolidated basis, including in the consolidation all other U.S. affiliates in which it directly or indirectly owns more than 50 per centum of the outstanding voting stock, unless the instructions for a given report form specifically provide otherwise. However, separate reports may be filed

where a given U.S. affiliate is not normally consolidated due to unrelated operations or lack of control, provided written permission has been requested from and granted by BEA.

(f) The place and time for filing, and specific instructions and definitions relating to, a given report form will be given on the report form. Reports are required even though the foreign person's equity interest in the U.S. business enterprise may have been established, acquired, liquidated, or sold during the reporting period.

(g) *Exemption levels.* Exemption levels for individual report forms will normally be stated in terms of total assets, sales or gross operating revenues excluding sales taxes, and net income after income taxes, whether positive or negative, although different or special criteria may be specified for a given report form. If any one of the three items exceeds the exemption level and if the statistical data requested in the report are applicable to the entity being reported, then a report must be filed. Since these items may not have to be reported on a given form, a person claiming exemption from filing a given report form must furnish a certification as to the levels of the items on which the exemption is based or must certify that the data requested are not applicable. The exemption level tests shall be applied as outlined below.

(1) For quarterly report forms, as to the assets test, reports are required beginning with the quarter in which total assets exceed the exemption level; as to the test for sales (revenues) and net income after income taxes, reports are required for each quarter of a year in which the annual amount of these items exceeds or can be expected to exceed the exemption level. Quarterly reports for a year may be required retroactively when it is determined that the exemption level has been exceeded.

(2) For report forms requesting annual data after the close of the year in question, the test shall be whether any one of the three items exceeded the exemption level during that year.

If total assets, sales or net income exceed the exemption level in a given year, it is deemed that the exemption level will also be exceeded in the following year.

The number and title of each report form, its exemption level and other reporting criteria, if any, pertaining to it, are given below.

(h) *Quarterly report forms.* (1) BE-605—Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, With Foreign Parent: One report is required for each U.S. affiliate exceeding an exemption level of \$20,000,000.

(2) BE-605 Bank—Transactions of U.S. Banking Affiliate with Foreign Parent: One report is required for each U.S. banking affiliate exceeding an exemption level of \$20,000,000.

(i) *Annual report form.* BE-15—Annual Survey of Foreign Direct Investment in the United States: One report is required for each consolidated U.S. affiliate, except a bank, exceeding an exemption level of \$10,000,000. A long form, Form BE-15(LF), must be filed by each nonbank U.S. affiliate for which at least one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—exceeds \$50,000,000 (positive or negative); a short form, Form BE-15(SF), must be filed by each nonbank U.S. affiliate for which at least one of the three items exceeds \$10,000,000 but no one item exceeds \$50,000,000 (positive or negative). U.S. affiliates that are banks are exempt from the reporting requirements of this survey.

(j) *Other report forms.* (1) BE-607—Industry Classification Questionnaire: In general, a U.S. affiliate will be assigned a BEA 3-digit industry code in the BE-12 Benchmark Surveys required by the Act to be conducted in 1980, 1987, and every fifth year thereafter. However, interim reports on Form BE-607 are required:

(i) For each U.S. affiliate newly established or acquired by a foreign person; or

(ii) For an existing U.S. affiliate whose industry classification changes so that either a previous BE-607 report or the last BE-12 report required to be filed does not accurately reflect the current industry classification of the U.S. affiliate.

For new U.S. affiliates, the BE-607 report must be filed only if the affiliate must file one of the other reports and shall be submitted with the initial fil-

ing of the related report. For a change in an existing U.S. affiliate which is currently filing one of the other reports, the BE-607 report must be filed whenever it is determined that a change from one BEA 3-digit industry classification to another has occurred.

(2) BE-12—Benchmark Survey of Foreign Direct Investment in the United States: Section 4b of the Act (22 U.S.C. 3103) provides that a comprehensive benchmark survey of foreign direct investment in the United States shall be conducted in 1980, 1987, and every fifth year thereafter. The survey is referred to as the "BE-12". Exemption levels, specific requirements for, and the year of coverage of, a given BE-12 Survey may be found in §806.17.

(3) BE-13—Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets, of a U.S. Business Enterprise, Including Real Estate. This report is to be filed either:

(i) By a U.S. business enterprise when a foreign person establishes or acquires directly, or indirectly through an existing U.S. affiliate, a 10 percent or more voting interest in that enterprise, including an enterprise that results from the direct or indirect acquisition by a foreign person of a business segment or operating unit of an existing U.S. business enterprise that is then organized as a separate legal entity; or

(ii) By the existing U.S. affiliate of a foreign person when it acquires a U.S. business enterprise, or a business segment or operating unit of a U.S. business enterprise, that the existing U.S. affiliate merges into its own operations rather than continuing or organizing as a separate legal entity.

A separate report must be filed for each foreign parent or existing U.S. affiliate that is a party to the transaction.

EXCLUSIONS AND EXEMPTIONS

(a) Residential real estate held exclusively for personal use and not for profitmaking purposes is not subject to the reporting requirements. A residence which is an owner's primary residence that is then leased by the owner while outside the United States but which the owner intends to reoccupy, is considered real estate held for personal use. Ownership of residential real estate by a corporation whose sole purpose is to hold the

real estate and where the real estate is for the personal use of the individual owner(s) of the corporation, is considered real estate held for personal use.

(b) An existing U.S. affiliate is exempt from reporting the acquisition of either a U.S. business enterprise, or a business segment or operating unit of a U.S. business enterprise, that it then merges into its own operations, if the total cost of the acquisition was \$1,000,000 or less and does not involve the purchase of 200 acres or more of U.S. land. (If the acquisition involves the purchase of 200 acres or more of U.S. land, it must be reported regardless of the total cost of the acquisition.)

(c) An established or acquired U.S. business enterprise, as consolidated, is exempt if its total assets (not the foreign parent's or existing U.S. affiliate's share) at the time of acquisition or immediately after being established were \$1,000,000 or less and it does not own 200 acres or more of U.S. land. (If it owns 200 acres or more of U.S. land, it must report regardless of the value of total assets.)

If exempt under (b) or (c), the existing U.S. affiliate or the established or acquired U.S. business enterprise must, nevertheless, file an "Exemption Claim, Form BE-13" to validate the exemption.

(4) Form BE-14—Report by a U.S. Person Who Assists or Intervenes in the Acquisition of a U.S. Business Enterprise by, or Who Enters into a Joint Venture With, a Foreign Person—to be completed either by:

(i) A U.S. person—including, but not limited to, an intermediary, a real estate broker, business broker, and a brokerage house—who assists or intervenes in the sale to, or purchase by, a foreign person or a U.S. affiliate of a foreign person, of a 10 percent or more voting interest in a U.S. business enterprise, including real estate; or

(ii) A U.S. person who enters into a joint venture with a foreign person to create a U.S. business enterprise.

A U.S. person is required to report only when such a foreign involvement is known; it is not incumbent upon the U.S. person to ascertain the foreign status of a person involved in an acquisition unless the U.S. person has reason to believe the acquiring party may be a foreign person. If a U.S. person required to file a Form BE-14 files Form BE-13 relating to the acquisition of the U.S. business enterprise by a foreign

person, then Form BE-14 is not required.

Total Exemptions—(a) Residential real estate held exclusively for personal use and not for profitmaking purposes is not subject to the reporting requirements. A residence which is an owner's primary residence that is then leased by the owner while outside the United States but which the owner intends to reoccupy, is considered real estate held for personal use. Ownership of residential real estate by a corporation whose sole purpose is to hold the real estate and where the real estate is for the personal use of the individual owner(s) of the corporation, is considered real estate for personal use.

(b) If the U.S. business enterprise acquired has total assets of, or if the capitalization (including loans from the joint venturers) of the joint venture to be established is, \$1,000,000 or less, than no report is required, provided the enterprise does not own 200 acres or more of U.S. land. (If it owns 200 acres or more of U.S. land, a report is required regardless of the value of total assets.)

(5) BE-21—Survey of Foreign Direct Investment in U.S. Business Enterprises Engaged in the Processing, Packaging, or Wholesale Distribution of Fish or Seafoods. Reporting consists of:

(i) Form BE-21P—Identification Questionnaire. A completed questionnaire is required from (a) each U.S. business enterprise that is a U.S. affiliate of a foreign person and that engaged in the processing, packaging, or wholesale distribution of fish or seafoods, and (b) any person to whom a questionnaire is sent by BEA.

(ii) Form BE-21A—Report for a U.S. Business Enterprise that is a U.S. Affiliate of a Foreign Person. A completed report is required from each U.S. business enterprise that is a U.S. affiliate of a foreign person and that engaged in the processing, packaging, or wholesale distribution of fish or seafoods.

(iii) Form BE-21B—Report for each Establishment of a U.S. Business Enterprise that is a U.S. Affiliate of a Foreign Person. A completed report is required for each establishment, of the

U.S. affiliate, that engaged in the processing, packaging, or wholesale distribution of fish or seafoods.

[42 FR 64315, Dec. 22, 1977; 43 FR 2169, Jan. 16, 1978, as amended at 44 FR 32586, June 6, 1979; 46 FR 23226, Apr. 24, 1981; 46 FR 60191, Dec. 9, 1981; 47 FR 13139, Mar. 29, 1982; 47 FR 14138, Apr. 2, 1982; 49 FR 3174, Jan. 26, 1984; 52 FR 8446, Mar. 18, 1987; 53 FR 1016, Jan. 15, 1988; 53 FR 15198, Apr. 28, 1988; 54 FR 1352, Jan. 13, 1989; 58 FR 38290, July 16, 1993; 58 FR 53125, Oct. 14, 1993]

§ 806.16 Rules and regulations for BE-10, Benchmark Survey of U.S. Direct Investment Abroad—1994.

A BE-10, Benchmark Survey of U.S. Direct Investment Abroad will be conducted covering 1994. All legal authorities, provisions, definitions, and requirements contained in §§ 806.1 through 806.13 and 806.14 (a) through (d) are applicable to this survey. Specific additional rules and regulations for the BE-10 survey are given in paragraphs (a) through (e) of this section.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE-10, Benchmark Survey of U.S. Direct Investment Abroad—1994, contained herein, whether or not they are contacted by BEA. Also, a person, or their agent, who is contacted by BEA about reporting in this survey, either by sending them a report form or by written inquiry, must respond in writing pursuant to § 806.4. They may respond by:

(1) Certifying in writing, within 30 days of being contacted by BEA, to the fact that the person had no direct investment within the purview of the reporting requirements of the BE-10 survey;

(2) Completing and returning the “BE-10 Claim for Not Filing” within 30 days of receipt of the BE-10 survey report forms; or

(3) Filing the properly completed BE-10 report (comprising Form BE-10A or BE-10A BANK and Forms BE-10B(LF), BE-10B(SF) and/or BE-10B BANK) by May 31, 1995, or June 30, 1995, as required.

(b) *Who must report.* (1) A BE-10 report is required of any U.S. person that had a foreign affiliate—that is, that had direct or indirect ownership or control of at least 10 percent of the voting stock of an incorporated foreign

business enterprise, or an equivalent interest in an unincorporated foreign business enterprise—at any time during the U.S. person’s 1994 fiscal year.

(2) If the U.S. person had no foreign affiliates during its 1994 fiscal year, a “BE-10 Claim for Not Filing” must be filed within 30 days of receipt of the BE-10 survey package; no other forms in the survey are required. If the U.S. person had any foreign affiliates during its 1994 fiscal year, a BE-10 report is required and the U.S. person is a U.S. Reporter in this survey.

(3) Reports are required even though the foreign business enterprise was established, acquired, seized, liquidated, sold, expropriated, or inactivated during the U.S. person’s 1994 fiscal year.

(c) *Forms for nonbank U.S. Reporters and foreign affiliates.*—(1) *Form BE-10A (Report for the U.S. Reporter).* A BE-10A report must be completed by a U.S. Reporter that is not a bank. If the U.S. Reporter is a corporation, Form BE-10A is required to cover the fully consolidated U.S. domestic business enterprise.

(i) If a nonbank U.S. Reporter had any foreign affiliates, whether held directly or indirectly, for which any one of the following three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than \$3 million (positive or negative) at any time during the affiliate’s 1994 fiscal year, the U.S. Reporter must file a complete Form BE-10A and, as applicable, a BE-10A SUPPLEMENT listing each, if any, exempt foreign affiliate. It must also file a Form BE-10B(LF), BE-10B(SF), or BE-10B BANK, as appropriate, for each nonexempt foreign affiliate.

(ii) If a nonbank U.S. Reporter had no foreign affiliates for which any one of the three items listed in paragraph (c)(1)(i) of this section was greater than \$3 million (positive or negative) at any time during the affiliate’s 1994 fiscal year, then only items 1–4 of Form BE-10A and the BE-10A SUPPLEMENT, listing all exempt foreign affiliates, must be completed.

(2) *Form BE-10B(LF) or (SF) (Report for foreign affiliate).* (i) A BE-10B(LF) (Long Form) must be filed for each nonbank foreign affiliate of a nonbank

U.S. Reporter, whether held directly or indirectly, for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than \$50 million (positive or negative) at any time during the affiliate's 1994 fiscal year.

(ii) A BE-10B(SF) (Short Form) must be filed.

(A) For each nonbank foreign affiliate of a nonbank U.S. Reporter, whether held directly or indirectly, for which any one of the three items listed in paragraph (c)(2)(i) of this section was greater than \$3 million, but for which no one of these items was greater than \$50 million (positive or negative), at any time during the affiliate's 1994 fiscal year, and

(B) For each nonbank foreign affiliate of a U.S. bank Reporter, whether held directly or indirectly, for which any one of the three items listed in paragraph (c)(2)(i) of this section was greater than \$3 million (positive or negative) at any time during the affiliate's 1994 fiscal year.

(iii) Notwithstanding paragraphs (c)(2)(i) and (c)(2)(ii) of this section, a Form BE-1B(LF) or (SF) must be filed for a foreign affiliate of the U.S. Reporter that owns another nonexempt foreign affiliate of that U.S. Reporter, even if the foreign affiliate parent is otherwise exempt, i.e., a Form BE-10B(LF), (SF), or BANK must be filed for all affiliates upward in a chain of ownership.

(d) *Forms for U.S. Reporters and foreign affiliates that are banks or bank holding companies.* (1) For purposes of the BE-10 survey, "banking" covers a business entity engaged in deposit banking or closely related functions, including commercial banks, Edge Act corporations engaged in international or foreign banking, foreign branches and agencies of U.S. banks whether or not they accept deposits abroad, savings and loans, savings banks, and bank holding companies, i.e., holding companies for which over 50 percent of their total income is from banks that they hold. If the bank or bank holding company is part of a consolidated business enterprise and the gross operating revenues from nonbanking activities of

this consolidated entity are more than 50 percent of its total revenues, then the consolidated entity is deemed not to be a bank even if banking revenues make up the largest single source of all revenues. (Activities of subsidiaries of a bank or bank holding company that may not be banks but that provide support to the bank parent company, such as real estate subsidiaries set up to hold the office buildings occupied by the bank parent company, are considered bank activities.)

(2) *Form BE-10A BANK (Report for a U.S. Reporter that is a bank).* A BE-10A BANK report must be completed by a U.S. Reporter that is a bank. For purposes of filing Form BE-10A BANK, the U.S. Reporter is deemed to be the fully consolidated U.S. domestic business enterprise and all required data on the form shall be for the fully consolidated domestic entity.

(i) If a U.S. bank had any foreign affiliates at any time during its 1994 fiscal year, whether a bank or nonbank and whether held directly or indirectly, for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than \$3 million (positive or negative) at any time during the affiliate's 1994 fiscal year, the U.S. Reporter must file a complete Form BE-10A BANK and, as applicable, a BE-10A BANK SUPPLEMENT listing each, if any, exempt foreign affiliate, whether bank or nonbank. It must also file a Form BE-10B(SF) for each non-exempt nonbank foreign affiliate and a Form BE-10B BANK for each non-exempt foreign bank affiliate.

(ii) If the U.S. bank Reporter had no foreign affiliates for which any one of the three items listed in paragraph (d)(2)(i) of this section was greater than \$3 million (positive or negative) at any time during the affiliate's 1994 fiscal year, then only items 1-4 of Form BE-10A BANK and the BE-10A BANK SUPPLEMENT, listing all exempt foreign affiliates, should be completed.

(3) *Form BE-10B BANK (Report for a foreign affiliate that is a bank).* (i) A BE-10B BANK report must be filed for each foreign bank affiliate of a bank or nonbank U.S. Reporter, whether directly or indirectly held, for which any

one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than \$3 million (positive or negative) at any time during the affiliate's 1994 fiscal year.

(ii) Notwithstanding paragraph (d)(3)(i) of this section, a Form BE-10B BANK must be filed for a foreign bank affiliate of the U.S. Reporter that owns another nonexempt foreign affiliate of that U.S. Reporter, even if the foreign affiliate parent is otherwise exempt, i.e., a Form BE-10B(LF), (SF), or BANK must be filed for all affiliates upward in a chain of ownership. However, a Form BE-10B BANK is not required to be filed for a foreign bank affiliate in which the U.S. Reporter holds only an indirect ownership interest of 50 percent or less and that does not own a reportable nonbank foreign affiliate, but the indirectly owned bank affiliate must be listed on the BE-10A BANK SUPPLEMENT.

(e) *Due date.* A fully completed and certified BE-10 report comprising Form BE-10A or 10A BANK, BE-10A SUPPLEMENT (as required), and Form(s) BE-10B(LF), (SF), or BANK (as required) is due to be filed with BEA not later than May 31, 1995 for those U.S. Reporters filing less than 50, and June 30, 1995 for those U.S. Reporters filing 50 or more, Forms BE-10B(LF), (SF) or BANK.

[59 FR 62568, Dec. 6, 1994]

§ 806.17 Rules and regulations for BE-12, Benchmark Survey of Foreign Direct Investment in the United States—1992.

A BE-12, Benchmark Survey of Foreign Direct Investment in the United States will be conducted covering 1992. All legal authorities, provisions, definitions, and requirements contained in §§ 806.1 through 806.13 and § 806.15 (a) through (g) are applicable to this survey. Specific additional rules and regulations for the BE-12 survey are given below.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE-12, Benchmark Survey of Foreign Direct Investment in the United States—1992, contained herein, whether or not they

are contacted by BEA. Also, a person, or their agent, contacted by BEA concerning their being subject to reporting, either by sending them a report form or by written inquiry, must respond in writing pursuant to § 806.4. This may be accomplished by completing and returning either Form BE-12(X) within 30 days of its receipt if Form BE-12(LF), Form BE-12(SF), or Form BE-12 Bank do not apply, or by completing and returning Form BE-12(LF), Form BE-12(SF), or Form BE-12 Bank, whichever is applicable, by May 31, 1993.

(b) *Who must report.* A BE-12 report is required for each U.S. affiliate, i.e., for each U.S. business enterprise in which a foreign person owned or controlled, directly or indirectly, 10 percent or more of the voting securities if an incorporated U.S. business enterprise, or an equivalent interest if an unincorporated U.S. business enterprise, at the end of the business enterprise's 1992 fiscal year. A report is required even though the foreign person's ownership interest in the U.S. business enterprise may have been established or acquired during the reporting period. Beneficial, not record, ownership is the basis of the reporting criteria.

(c) *Forms to be filed.* (1) Form BE-12(LF)—Benchmark Survey of Foreign Direct Investment in the United States—1992 (Long Form) must be completed and filed by May 31, 1993, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1992 fiscal year, if:

(i) It is not a bank, and

(ii) On a fully consolidated, or, in the case of real estate investment, an aggregated basis, one or more of the following three items for the U.S. affiliate (not just the foreign parent's share) exceeded \$50 million (positive or negative) at the end of, or for, its 1992 fiscal year:

(A) Total assets (do not net out liabilities)

(B) Sales or gross operating revenues, excluding sales taxes, or

(C) Net income after provision for U.S. income taxes.

(2) Form BE-12(SF)—Benchmark Survey of Foreign Direct Investment in the United States—1992 (Short Form) must be completed and filed by May 31,

1993, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1992 fiscal year, if:

- (i) It is not a bank, and
- (ii) On a fully consolidated, or, in the case of real estate investments, an aggregated basis, one or more of the following three items for the U.S. affiliate (not just the foreign parent's share) exceeded \$1 million, but no one item exceeded \$50 million (positive or negative) at the end of, or for, its 1992 fiscal year:

- (A) Total assets (do not net out liabilities)

- (B) Sales or gross operating revenues, excluding sales taxes, or

- (C) Net income after provision for U.S. income taxes.

(3) Form BE-12 Bank—Benchmark Survey of Foreign Direct Investment in the United States—1992 BANK must be completed and filed by May 31, 1993, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1992 fiscal year, if:

- (i) The U.S. affiliate is a bank or a bank holding company, and

- (ii) On a fully consolidated basis, one or more of the following three items for the U.S. affiliate (not just the foreign parent's share) exceeded \$1 million (positive or negative) at the end of, or for, its 1992 fiscal year:

- (A) Total assets (do not net out liabilities)

- (B) Sales or gross operating revenues, excluding sales taxes, or

- (C) Net income after provision for U.S. income taxes.

(4) Form BE-12(X)—Benchmark Survey of Foreign Direct Investment in the United States—1992, Claim for Exemption from Filing BE-12(LF), BE-12(SF), and BE-12 Bank must be completed and filed within 30 days of the date it was received, or by May 31, 1993, whichever is sooner, by:

- (i) Each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1992 fiscal year (whether or not the U.S. affiliate, or its agent, is contacted by BEA concerning its being subject to reporting in the 1992 benchmark survey), but is exempt from filing Form BE-12(LF), Form BE-12(SF), and Form BE-12 Bank; and

- (ii) Each U.S. business enterprise, or its agent, that is contacted, in writing, by BEA concerning its being subject to reporting in the 1992 benchmark survey but that is not otherwise required to file the Form BE-12(LF), Form BE-12(SF), or Form BE-12 Bank.

(d) *Aggregation of real estate investments.* All real estate investments of a foreign person must be aggregated for the purpose of applying the reporting criteria. A single report form must be filed to report the aggregate holdings, unless written permission has been received from BEA to do otherwise. Those holdings not aggregated must be reported separately.

(e) *Exemption.* (1) A U.S. affiliate as consolidated, or aggregated in the case of real estate investments, is not required to file a Form BE-12(LF), Form BE-12(SF), or Form BE-12 Bank if each of the following three items for the U.S. affiliate (not just the foreign parent's share) did not exceed \$1 million (positive or negative) at the end of, or for, its 1992 fiscal year:

- (i) Total assets (do not net out liabilities)

- (ii) Sales or gross operating revenues, excluding sales taxes, and

- (iii) Net income after provision for U.S. income taxes.

(2) If a U.S. business enterprise was a U.S. affiliate at the end of its 1992 fiscal year but is exempt from filing a completed Form BE-12(LF), BE-12(SF), or Form BE-12 Bank, it must nevertheless file a completed and certified Form BE-12(X).

(f) *Due date.* A fully completed and certified Form BE-12(LF), Form BE-12(SF), or BE-12 Bank is due to be filed with BEA not later than May 31, 1993. A fully completed and certified Form BE-12(X) is due to be filed with BEA within 30 days of the date it was received, or by May 31, 1993, whichever is sooner.

[57 FR 60732, Dec. 22, 1992]

§806.18 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section will comply with the requirements of section 3507 (f) of the Paperwork Reduction Act (PRA) which require agencies to display a current control number assigned

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by the Director of OMB for each agency information collection requirement.

(b) *Display.*

15 CFR section where identified and described	Current OMB control No.
806.1 through 806.17	0608–0020 0024 0032 0004 0035 0030 0009 0023 0034 0053

[48 FR 56944, Dec. 27, 1983, as amended at 51 FR 41476, Nov. 17, 1986]

PART 807—PUBLIC INFORMATION

Sec.

807.1 Public Reference Facility.

807.2 Department of Commerce rules applicable.

§ 807.1 Public Reference Facility.

The Public Reference Facility of the Bureau of Economic Analysis is located in room B7 of the Tower Building, 1401 K Street NW., Washington, DC 20230. The telephone number is 202–523–0595. The facility is open to the public from 8:30 a.m. to 5 p.m., Monday through Friday, except legal holidays.

(5 U.S.C. 552 as amended by Pub. L. 93–502; 5 U.S.C. 553; 5 U.S.C. 301; Reorganization Plan No. 5 of 1950; and 15 CFR part 4 of Subtitle A)

[42 FR 38574, July 29, 1977]

§ 807.2 Department of Commerce rules applicable.

The rules applicable to the services provided in the facility and procedures to be followed for public inspection and copying of materials are found in part 4 of subtitle A of title 15 CFR.

(5 U.S.C. 552 as amended by Pub. L. 93–502; 5 U.S.C. 553; 5 U.S.C. 301; Reorganization Plan No. 5 of 1950; and 15 CFR Part 4 of Subtitle A)

[42 FR 38574, July 29, 1977]